

Attachment 11 -- Correspondence re Disclosure of  
Investigative Materials to Clinton  
Attorney Wada and Attorneys for Baby

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JOE BOB GOLDEN

JASPER, TEXAS

January 9, 1964

The Honorable John Edgar Hoover  
Director  
Federal Bureau of Investigation  
Department of Justice  
Washington, D. C.

Honorable J. Lee Rankin  
Chief Counsel  
The President's Commission  
Veteran of Foreign Wars Building  
200 Maryland Avenue, N. E.  
Washington, D. C.

Re: No. E-4010-J, The State of Texas vs. Jack Ruby  
(Criminal District Court No. 3, Dallas County, Texas)

Sirs:

The defendant, Jack Ruby, in the above captioned action will likely go on trial either February 3 or February 10 unless the Court transfers the case to another county in Texas.

Mr. Ruby is represented by chief defense counsel Melvin M. Belli, Belli Building, San Francisco, California, Sam Brody, Suite 204, 6505 Wilshire Boulevard, Los Angeles 48, California, his associate, and myself as local Texas counsel, having been brought into the case by Mr. Belli.

The purpose of this letter is to request of you and through you the reports, minutes and all evidence of the Commission created by Executive Order 11130 dated November 29, 1963 created by President Lyndon B. Johnson to report upon the assassination of President John F. Kennedy and the shooting of his assailant, Lee Harvey Oswald.

According to press reports, the Attorney General of Texas was in the process of convening an examining court to conduct in Texas an investigation into the assassination of President Kennedy and the shooting by Jack Ruby of his assailant, Lee Harvey Oswald, but this investigation, at the request of the Commission, was halted. This yielding to the request of the Commission by the Attorney General of Texas has deprived the defendant Ruby of much defensive evidence, which otherwise, would have been available to him under Texas process.

To date, our investigation reflects, for the most part, that the special agents of the FBI are the only investigative agency doing work for the prosecution in this case and that their material is being submitted daily to the District Attorney's office in Dallas.

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The Honorable <sup>10033</sup> ~~10033~~ Edgar Hoover  
Honorable J. Lee Rankin  
January 9, 1964  
Page 2

As you know, the defendant, Jack Ruby, is presently under indictment for the November 24, 1963 shooting of Lee Harvey Oswald, who assassinated the late John F. Kennedy on November 22, 1963 when Mr. Kennedy was President of the United States. Following the assassination of President Kennedy and the worldwide catastrophe that it produced, President Lyndon B. Johnson appointed the Commission composed of the most distinguished men in the United States for the purpose of ascertaining, evaluating and reporting upon the truth and the true facts relating to the assassination of the late President, The Honorable John F. Kennedy, and the subsequent death of the man (Lee Harvey Oswald) charged with the assassination.

We lawyers who are constituting the trial attorneys for Mr. Ruby understand that such Commission immediately entered upon the discharge of its duties and is now in possession of such truth and true facts.

We are advised from the news media that the FBI has turned its investigative report of the Oswald shootings and the shooting of Oswald over to the Commission and is currently submitting further investigative reports to the Commission, along with the joint investigative efforts of Commission personnel and interested Government agencies.

We assume that the finding of the Commission is intended to be relied upon by the whole world as being true and correct. Further, the Commission was directed to examine the evidence developed by the Federal Bureau of Investigation and any additional evidence that may come to light or be uncovered by any Federal or State authorities and to report its findings and conclusions to President Johnson.

As Mr. Ruby's counsel, we desire to observe that while he is charged by the State of Texas with the offense of "murder with malice" of Lee Harvey Oswald, the assailant of the late President Kennedy, yet if Ruby is guilty of any offense under Texas law according to the defense we contemplate arguing in his behalf, it could at the very most, for reasons we will discuss, be classed as "murder without malice," which is punishable only by a term of years in the penitentiary, but not by his death, which the Dallas District Attorney's office is seeking, demanding, and attempting to wreak.

The Honorable John Edgar Hoover  
Honorable J. Lee Rankin  
January 9, 1964  
Page 3

The evidence will show that the offense that Ruby is charged with was committed by a person who felt great and deep devotion to President Kennedy and his family and was done under overwhelming provocation, uncontrollable impulse, and mental disease and mental defect of a nature that precluded Ruby from knowing right from wrong at the time of the shooting of Oswald.

Under such circumstances a jury could either find that Mr. Ruby's mental state requires commitment and mental care, or find that the shooting of Oswald was committed under such extreme provocation, uncontrollable impulses and feelings and circumstances as to be "murder without malice."

It will be contended at the trial, and this contention will be buttressed by world renowned psychiatrists and clinical psychologists in the area of dynamic psychiatry, that under Texas law that Ruby was legally insane, and that, among other things, his defense will be that he is not legally responsible for the offense alleged against him because of such mental disease and defect.

In order to prove and show that Ruby cannot be guilty of any offense higher than that of "murder without malice" it is necessary for his defense team to prove and be able to prove that the assassin Oswald actually did, in fact, murder and assassinate the late President John F. Kennedy.

Further, the defense is entitled to offer and prove under Texas law that the assailant Oswald was a dangerous man of bad character and reputation and a professed Communist.

The investigative reports which have been and are being delivered to the Commission contain an abundance of evidence that will tend to establish the defenses of the defendant Ruby to the charge against him.

Indeed, much of such proof and facts in possession of the said Commission will be denied the defendant Ruby at his trial unless the Commission releases it forthwith to the defendant Ruby and his counsel for inspection and copying.

The proof and facts in possession of the Commission will indubitably show and prove the defensive elements of Mr. Ruby's defense.

The Honorable John Edgar Hoover  
Honorable J. Lee Rankin  
January 9, 1964  
Page 4

In the interest of American law, truth and justice, and under due process of law under the Texas and United States Constitution, the Commission should, and we so respectfully request of it, make the facts of its investigation producible available forthwith to the Ruby defense at the earliest possible date for adequate review and evaluation.

Under all the facts and circumstances, particularly in view of the fact that the trial of Ruby's case will attract worldwide attention, Ruby's rights, and American due process of law, will be forever prejudiced and denied if such true facts and findings are not made available to Ruby's defense counsel.

Too, if we are not readily provided the privilege of inspecting and copying the pertinent material contained in the Commission's investigative product prior to the trial of his case, Ruby will simply be denied due process in an American court for the alleged shooting of Lee Harvey Oswald, who assassinated the late President John F. Kennedy, Officer J. D. Tippett of Dallas, Texas, and for the near fatal wounds of Governor John Connally of Texas.

In this connection, allow us to further observe that a hostile press of much power and influence in Dallas has at all times attempted to influence and inflame the public against Ruby to the extent that it is almost impossible for him to receive a fair trial and be accorded his legal rights there.

Allow us to illustrate the bewildering power of that powerfully slanted press. We do not at all accept or dignify with any shred of credibility whatsoever press releases that Lee Harvey Oswald could have been in the pay of the Federal Bureau of Investigation. This was indicated in a press release originating in Dallas and contained in the Houston Post January 1, 1964. The lead line of that release read: "Oswald rumored as informant for U. S." That story had a Dallas date line and was written by Houston Post Staff Correspondent Lonnie Hudkins.

From the release it seems that some reporter interviewed Dallas Chief of Police Jessie Curry on November 22, 1963 and stated that the FBI knew that Oswald was in Dallas but had not given his name to check to the police or other law enforcement agencies involved in President Kennedy's protection. That January 1, 1964 Houston Post story says that Chief Curry later retracted the statement.

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The Honorable John Edgar Hoover  
Honorable J. Lee Rankin  
January 9, 1964  
Page 5

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In the press report writer Hudkins says there is speculation by Police and Sheriff's Deputies in Dallas that Oswald might have been an informant because (as stated in the release), as one put it, "You just wouldn't think to check out one of your own stoolies." The story points out that Dallas District Attorney, a former FBI agent himself and "therefore a man who would know law such an agency would operate, does not discount the possibility that Oswald may have been an informant." "It may be true," he said, "but I don't think it will ever be made public if he is.", the article said.

The article points out that Oswald knew of Joe Hosty, the FBI agent who had handled subversive matters in the Dallas FBI office. The article said, "He had Hosty's home phone, office phone, and car license number.", said Bill Alexander, "Assistant District Attorney to Henry Wade, one of the State's most able prosecutors."

"Alexander was one of the men who got a chance to listen in on the grilling of Oswald on November 22nd, the day the President was killed, and November 23rd, the day before Oswald's life came to an end." This bit of incredible news reporting is just simply too fantastic to be accepted by rational minds.

It points up, however, the extreme lengths to which the District Attorney and some of the press situated at Dallas will go in their effort to whip the Dallas people into a prejudiced mind against Mr. Ruby in the hope of wreaking a death sentence jury verdict there as well as elsewhere.

A portion of the Dallas press, particularly the Dallas Morning News, is now seeking to create an image in Dallas through a death sentence jury verdict of Mr. Ruby that will restore the respect that was lost there by Dallas because of the ignominious assault which occurred in Dallas in 1960 by some of its citizens upon President and Mrs. Lyndon B. Johnson and the assault upon Ambassador to the United Nations Adlai Stephenson shortly before the assassination of President Kennedy, and the assassination as well.

Indeed, such powerfully influential press reporting has been, and is geared to persuade their advertisers and readers and prospective jurors trying Jack Ruby everywhere in and out of the jury box that Jack Ruby and not Oswald is the guilty party that has put "Dallas on trial" for the assaults upon the Johnsons, Mr. Stephenson, and the worldwide tragedy of the assassination of President Kennedy.

The Honorable John Edgar Hoover  
Honorable J. Lee Rankin  
January 9, 1964  
Page 6

We must therefore be provided all the material evidence, that is being gathered by the Commission, in behalf of our effort to place before the jury the truth and the true facts in opposition to the indelible effect of the warped and prejudicial press upon the public mind which, otherwise, is bound to follow the members of the panel into the jury room that tries Mr. Ruby. You can readily envision that such warping of the facts by the press and news media have constituted, not merely a clear and present danger to the administration of justice, but an actual obstruction of the administration of justice, in that they are depriving the defendant Jack Ruby of his constitutional right to have an impartial jury trial unless you provide us with the facts of your investigation. Otherwise, a trial of Jack Ruby without those pertinent facts would violate freedom of speech and of the press under the Fourteenth Amendment of the United States Constitution.

Only you can release Dallas from its bondage of grave and prejudicial error visited upon American law and due process.

Much of the evidentiary material contained in the Commission's investigation will surely be relevant, competent, and undoubtedly of impeachment value, outside of any exclusionary rule for the protection of vital national secrets, diplomatic relations, national security, and otherwise confidential in character.

Actually, in this, a state criminal proceeding, our request is most reasonable as none of the problems of foreign relations, espionage, sabotage, subversive activities, counterfeiting, internal security, national defense, and the like exist except as to a showing of the dangerous character, background, motives, and nature of the professed Marxist Lee Harvey Oswald in the assassination of President Kennedy. But we must prove those facts and the Commission surely has those facts available and we must assume they exist.

We address you, not only in the realization and hope that you will surely accept our proposal in the interest of a due and proper administration of justice to the American tradition of due process of law, but in the certain knowledge that every experienced trial judge, trial lawyer, and experienced investigator of facts, knows the value of relevant, competent, and impeaching evidence of statements of the witnesses -- " \* \* \* recording the events before time dulls treacherous memories."

THE HONORABLE JOHN EDGAR HOOVER  
HONORABLE J. LEE RANKIN  
January 9, 1964  
Page 7

It has always been the paramount interest of American jurisprudence in criminal prosecutions that justice shall be done--not alone that a case should be won.

The only way that we can know and decide the problems confronting us is to be able to inspect the investigative reports of the Commission and then decide whether to use them in Mr. Ruby's defense.

Only after inspection of the report by Ruby's counsel, " \* \* \* must the trial judge determine admissibility--e.g., evidentiary questions of inconsistency, materiality and relevancy--of the contents and the method to be employed by the elimination of parts immaterial or irrelevant. See Gordon v. U. S., 344 U. S. 418.", Jencks v. U. S., 353 U. S. 657, U. S. v. Reynolds, 345 U. S. 1, 32 A. L. R. 2d 382.

The letter and spirit of the rationale of American law is to the effect that our government must see that justice is done, because " \* \* \* it is unconscionable to allow it to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to his defense. \* \* \*" 345 U. S. 12.

The mere fact that this is a State prosecution rather than Federal does not develop a conflict with this tenet, for in Jencks (353 U. S. 657) we find: "In United States v. Andolschek (C. A. 2d N. Y.) 142 F. 2d 503, 506," Judge Learned Hand said:

" \* \* \* While we must accept it as lawful for a department of the Government to suppress documents, even when they will help determine controversies between third persons, we cannot agree that this should include their suppression in a criminal prosecution, founded upon those very dealings to which the documents relate, and whose criminality they will, or may, tend to exculpate. So far as they directly touch the criminal dealings, the prosecution necessarily ends any confidential character the documents may possess, it must be conducted in the open, and will they bear their subject matter."

The Dallas Morning News for January 4, 1964, in a column by Victor Riesel, refers to Lee Harvey Oswald as "the alleged assassin," and reads:

Honorable J. Lee Rankin

January 9, 1964

Page 3

"There appears to be no doubt that they will talk at great length with Ruby, the cocky killer of the alleged assassin. That will come after the trial, it is presumed. Some insiders expect a swift court session for Ruby. Then, Ruby will be placed under oath by the Commission and will testify as a regular witness."

Further, in the Dallas Morning News for January 7, 1964, the Dallas District Attorney is quoted as saying the Commission would make two reports of its findings: "I anticipate there will be one report on the deaths of President Kennedy and Officer J. D. Tippett and the wounding of Governor John Connally, and a second report on the shooting of Oswald," Wade said.

"If this second report is ready before Ruby's trial, I expect the Commission to withhold it until the trial is over."

Please be assured that Mr. Jack Ruby, the defendant, Mr. Belli, Mr. Brody, and I are all agreeable to the Commission conducting interviews now or at any time you prefer with the defendant, Jack Ruby. In addition, you may have such scientific tests on Mr. Ruby of your choosing, including, but not limited to, truth tests by sodium pentothal and polygraph and otherwise.

Finally, we urge you to consider this request for the investigative products of the Commission with the view of making same available to us at the earliest possible date for inspection and copying in order that the Ruby defense will be able to give Ruby, Texas, and America the defense in this trial that will add vitality and strength to the path and growth of due process.

By this means we petition and formally move you and through you the President's Commission which proceeds under Executive Order 11130 of November 29, 1963 and Public Law 88-202, 88th Congress, S. J. Resolution 137 of December 13, 1963, to provide instant the defendant Jack Ruby's defense team the right and privilege of inspecting and copying the investigative effects and products in the Commission's possession growing out of its duty and function of ascertaining, evaluating, and reporting to President Lyndon B. Johnson upon the facts relating to the assassination of the late President John F. Kennedy and the subsequent shooting of Lee Harvey Oswald.

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HONORABLE JOHN EDGAR HOOVER  
Honorable J. Lee Rankin  
January 9, 1964  
Page 9

We shall be pleased to appear before the Commission personally  
in this behalf if the Commission so decides.

Very respectfully submitted,

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By   
Joe H. Tonahill

JHT:vm

cc: The President

The White House

Washington, D. C.

The Chief Justice

of the Supreme Court

of the United States

Washington, D. C.

The Honorable Robert F. Kennedy

Attorney General

Department of Justice

Washington, D. C.

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